No record

Office Supreme Court U. S.
FILED.
APR 13 1885
JAMES H. McKENNEY.
CLERK.

122-644

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1885.

No. ~~362~~. 252

UNION METALLIC CARTRIDGE COMPANY,

Appellant,

vs.

UNITED STATES CARTRIDGE COMPANY,

Appellee.

BRIEF FOR APPELLANT

On Motion to Dismiss Appeal.

EDMUND WETMORE,

Counsel for Appellant.

C. G. BURGOYNE'S "Quick" Print, 146-150 Centre St., N. Y.

Supreme Court of the United States,

UNION METALLIC CARTRIDGE COMPANY, Appellant,	
AGAINST	No. 862.
UNITED STATES CARTRIDGE COMPANY, Appellee.	

Brief for appellant upon motion to dismiss appeal.

The motion to dismiss the appeal in this case is made upon the ground "that the matter in controversy is "only a branch of a suit between the same parties al- "ready decided by the Supreme Court, viz.: No. 124 "argued at the October Term, 1884."

This is erroneous in point of fact.

In the former suit the defendant therein, the United States Cartridge Company, claimed the right to use five certain machines bought from the firm of Forehand & Wadsworth, and known as the "Forehand & Wads- "worth Machines," on the ground that they were licensed to do so. The question whether such a license existed was reserved by the Court below until the coming in of the Master's report as to the other machines used by the said defendant, and the decision of the exceptions thereto. In rendering its final decision, after the report and exceptions were filed, the Court decided that the Forehand & Wadsworth machines

were not licensed, but refused to send the cause back to the Master for the purpose of including those five machines in his account, without prejudice, however, to the complainant's right to commence a new suit for that use.

A second suit was accordingly commenced for the infringement arising from the use of the Forehand & Wadsworth machines which had been exempted from the injunction that had been granted in the former suit. In the appeal from the decree in this first suit, already decided by this Court, it was held that the Allen patent did not cover machines in which the die was stationary and the bunter movable. All of the Forehand & Wadsworth machines were not of this character.

The use of the Forehand & Wadsworth machines by the defendant was proved in the second suit by stipulation, which is quoted below, and admits, as will be seen, a use, at least, of one of the machines with the *die* movable and the bunter stationary.

The stipulation referred to is as follows, the parts material to the present question being italicized :

" Complainant's Exhibit Defendant's " Stipulation as to use of Machines—J. H. " T., Examiner.

" The defendant admits that since April 13, 1877, the " date of Judge SHEPLEY's decision in the former suit " between the same parties, and before the filing of the " bill in this suit, *it used from time to time in its manu-* " *facture of cartridges, five certain heading machines* " *which had been bought of Forehand & Wadsworth*, " being the machines exempted from injunction by " Judge SHEPLEY in his said decision, but with certain " alterations made after said decision ; that is to say :

" Four of these machines, before altering, had a mov- " able punch which took up and carried the shell

" through a movable die against a stationary bunter, " the movable die having a slot in it through which " shells could be dropped one by one in the path of " the movable punch and the machines having no feed- " ing trough.

" *One of these five machines made for large-size cart-* " *ridges had a fixed die and a movable bunter when it* " *came from Forehand & Wadsworth, having been made* " *by Allen some years after the four other machines.*

" After the alterations four of the machines had the " die stationary and the bunter movable, and were pro- " vided with a feed trough and finger attachment for " feeding the shells automatically, and were as shown " in the drawing 'Complainant's Exhibit Drawing De- " fendant's Machine.' *One of the five machines had the* " *die movable and the bunter stationary with a trough* " *feeding into the die, remaining substantially in the* " *form in which it was received from Forehand &* " *Wadsworth, as illustrated by the model 'Complain-* " *ant's Exhibit Forehand & Wadsworth Machine,' ex-* " *cept that the block receiving the shells was cut away and* " *a finger and feed trough attached.*

In all particulars not herein specified, the five ma- " *chines as used by the defendant were in the same con-* " *dition as to construction, except as above set forth, that* " *they were in when bought of Messrs. Forehand &* " *Wadsworth.*

" FREDERICK P. FISH,
" *Of Counsel for Defendant.*
" EDMUND WETMORE,
" *Of Counsel for Complainant.*"

Rec. in Court below, p. 62.

The Court below dismissed the bill on the ground of want of jurisdiction, for reasons not arising in the former suit, from which decision the appeal herein was taken.

To the extent which the present case involves the use of a stationary bunter machine, it is not embraced within the scope of the decision already given. The right to recover depends solely upon the facts above stipulated, and as they embrace the use of a machine made in exact accordance with the Allen patent, so far as the relative motion of the die and bunter is concerned, the appeal should not be dismissed.

The case involves important questions not yet passed upon by the Court, which the appellant desires to submit.

The motion should be denied.

EDMUND WETMORE,
Counsel for Appellant.